

FILED

MAY 14 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, SAN FRANCISCO

LA QUINTA FRANCHISING, LLC,
a Nevada limited liability company,

Plaintiff,

vs.

CORDELIA HOTEL VENTURE, INC.,
a California Corporation and DOLAT
PATEL, an individual,

Defendants.

C 07 2556

COMPLAINT FOR INJUNCTION
AND DAMAGES FOR:

1. Breach of Contract
2. Breach of Guarantee

DEMAND FOR JURY TRIAL

FILED

COMPLAINT

The above-named plaintiff, La Quinta Franchising, LLC, by its attorneys, Bryan Cave, LLP, and as for its Complaint against the above-named defendants, alleges to the Court as follows:

JURISDICTION

[Diversity of Citizenship]

1. This Court has original jurisdiction under 28 U.S.C. § 1332, in that this is a civil action between citizens of different states, as the plaintiff, La Quinta Franchising, LLC ("La Quinta"), is a limited liability corporation incorporated

ORIGINAL
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1 under the laws of the State of Nevada with its principal place of business in Texas,
 2 and the defendants, Cordelia Hotel Ventures, Inc. ("Cordelia"), is a corporation
 3 incorporated under the laws of the State of California with its principal place of
 4 business in Concord, California, and the remaining defendant, Dolat Patel is a
 5 citizen of the State of California, with his principal residence in Concord, County of
 6 Contra Costa, California, and the matter in controversy is no less than One Hundred
 7 Thousand Dollars (\$100,000) and interest and therefore exceeds, exclusive of costs,
 8 Seventy-Five Thousand Dollars (\$75,000).

9 VENUE

10 2. Venue in this Court is proper because the defendants reside within this
 11 District, and a substantial part of the events giving rise to the claim set forth herein
 12 occurred within this District.

13 THE PARTIES

14 3. Plaintiff La Quinta is a limited liability company organized and
 15 existing under the laws of the State of Nevada, licensed to do business in the State
 16 of Texas and having its principal place of business in the State of Texas. For all
 17 purposes relevant herein, La Quinta is the successor in interest of La Quinta Inns,
 18 Inc. ("LQI").

19 4. Plaintiff is informed and believes that Defendants Cordelia is a
 20 corporation formed and existing in the State of California, having its principal place
 21 of business in Concord, County of Contra Costa, State of California.

22 5. Plaintiff is informed and believes that Defendant Dolat Patel is a
 23 citizen of California with his principal place of residence in Concord, County of
 24 Contra Costa.

25 GENERAL ALLEGATIONS

26 *The La Quinta System:*

27 6. La Quinta operates and licenses others to operate hotels under the trade
 28 names "La Quinta Inn" and "La Quinta Inn & Suites." La Quinta, its assignors and

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1 predecessors have continually used the names "La Quinta" and/or "La Quinta Inn"
2 and/or "La Quinta Inn & Suites" as its trade names and its service marks in
3 connection with the operation of licensed La Quinta Inns.

4 7. La Quinta, its assignors and predecessors have developed a
5 comprehensive system for operating La Quinta Inns, which includes (but is not
6 limited to) trademarks, logos, slogans, trade dresses and service marks (collectively,
7 the "La Quinta Marks"), building designs and layouts, equipment, specifications for
8 authorized accessories, proprietary manuals, training programs, methods of
9 operation and inventory control, and business standards and policies (collectively,
10 the "System"). La Quinta has the exclusive right to license the La Quinta Marks,
11 which are registered on the principal register of the United States Patent and
12 Trademark office (the "USPTO"). Since its first use, the name La Quinta has
13 become universally associated with La Quinta's unique and particular plan of hotel
14 service operation. As a result, La Quinta has common law trade name rights and
15 trademark rights in the name "La Quinta" and the other La Quinta Marks.

16 **The License Agreement**

17 8. On or about November 6, 2003, La Quinta entered into a license
18 agreement wherein Cordelia as granted a non-exclusive license to operate a hotel
19 establishment in Fairfield, California, using certain of La Quinta's intellectual
20 proprietary information, including but not limited to trademarks, copyrights,
21 marketing materials, training programs, policies, manuals and trade secrets.
22 Attached hereto as Exhibit "1", and incorporated by this reference, is a true and
23 correct copy of said agreement, which is hereinafter referred to as the "License
24 Agreement."

25 9. The License Agreement provides for Cordelia's use of La Quinta's
26 intellectual proprietary information pertaining to the System, including, but not
27 limited to, the La Quinta Marks, logos, slogans, servicemarks, trade dresses,
28

1 goodwill, copyrights, trade secrets, know-how, operating methodologies, systems,
2 standards and manuals, marketing materials, signage, furniture, equipment, fixtures,
3 training programs, specifications and policies (collectively, the "La Quinta
4 Intellectual Property").

5 10. Pursuant to the License Agreement, Cordelia agreed that it was
6 obligated to open and operate the La Quinta Inn Facility for a term of 20 years
7 under the La Quinta Marks.

8 11. At Section 5.03 of the License Agreement, the parties agreed on the
9 following timeline for construction, completion, and opening of Cordelia's La
10 Quinta Inn and Suites, in relevant part, as follows:

11 (b) If your Facility is to be newly constructed, you shall
12 commence construction (i.e., you start excavation or
13 grading for foundations for the Project) within six (6)
14 months after the Effective Date. Construction shall be
15 completed, and your Facility shall open for business as a
16 La Quinta Lodging Facility, within eleven (11) months
17 after the date you commence construction, if your Facility
18 is a La Quinta Inn, or within fourteen (14) months after
19 the date you commence construction, if your Facility is a
20 La Quinta Inn & Suites; provided however that in no
21 event shall you open your Facility without an Opening
22 Approval Notice as described in Section 5.03(h).

23 * * * *

24 (g) Time is of the essence in the performance of this
25 Agreement. However, we will give you a written
26 extension to commence construction, complete
27 construction, finish conversion renovations or open your
28 La Quinta Lodging Facility for business if you are delayed
due to Force Majeure, but under no circumstances shall
such delays, collectively, exceed ten (10) months.

Exhibit E – Additional Franchise Agreement Terms

1. Construction Commencement. Section 5.03(b) of the
Agreement is amended to delete the phrase "six (6)

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1 months" in the first sentence of that section and to replace
2 that phrase with "twelve (12) months". If requested by
3 Franchisee, Franchisor will not unreasonably withhold its
4 approval to further extend the construction
5 commencement date by up to two (2) six (6) month
6 periods provided Franchisee provides Franchisor with
7 evidence that it has applied for building permits and any
8 other required approvals to construct the Facility and
9 demonstrates that it is in good faith pursuing such permits
10 or other approvals and proceeding towards construction
11 commencement and is otherwise in full compliance with
12 the terms of this Agreement.

12. At Section 5.03(i), Cordelia expressly agreed and warranted to La
Quinta as follows:

13 Neither our approval of the Site nor any assistance we
14 may give you in identifying the Site, constitutes any
15 acknowledgement, warranty or representation of any kind,
16 express or implied, including, without limitation, any
17 warranty or representation as to the potential access,
18 visibility or profitability of a La Quinta Lodging Facility
19 at the Site. Our approval of the Site merely signifies that
20 we are willing to grant a franchise for a La Quinta
21 Lodging Facility at that location. Your decision to
22 develop and operate your Facility at the Site is based
23 solely on your own independent investigation of the
24 suitability of the Site for a La Quinta Lodging Facility.
25 Our exercise of our right to approve the Site layout, to
26 approve any plans, to inspect the construction of your
27 Facility and to issue the Opening Approval Notice shall be
28 solely for the purpose of assuring compliance with our
Standards and shall not be construed as any express or
implied representation or warranty that your Facility
complies with any applicable laws, codes or regulations
(including the ADA or any other federal, state, or local
law or ordinance regulating standards for the access to,
use of, or modification of buildings for and by persons
whose disabilities are protected by law) or that the
construction thereof is sound or free from defects. Our
criteria for approval or disapproval do not encompass

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1 technical, architectural or engineering considerations. We
2 shall have no liability or obligation with respect to the
3 construction of your Facility.

4 13. At Section 16.01 of the License Agreement, Cordelia expressly agreed
5 that failure to comply with the requirements of Section 5 would constitute a material
6 default of the License Agreement:

7 A material breach and an event of default under this
8 Agreement shall occur if:

9 (f) you fail to comply with the construction and opening
10 requirements described in Section 5.03(b), (c) or (f);

11 14. Section 16.02 of the License Agreement provides for certain remedies,
12 in relevant part, in the event of such a material default as follows:

13 Upon the occurrence of an event of default described in
14 Section 16.01, we shall have the right to exercise any one
15 or more of the following remedies, in addition to any other
16 remedies we may have at law or in equity (which may
17 include without limitation, an action for specific
18 performance and injunctive relief):

19 (a) we shall have the right to terminate this
20 Agreement and the franchise granted to you, effective
21 immediately upon delivery of notice of termination to
22 you. . . .

23 15. At Section 18.03 of the License Agreement, Cordelia and La Quinta
24 agreed to liquidated damages, in relevant part, as follows:

25 (a) by granting you the rights hereunder, we have
26 foregone the opportunity to grant a franchise to another
27 party or for us or our Affiliates to own and operate a La
28 Quinta Lodging Facility at the Site or in proximity to
the Site; and (b) if this Agreement is terminated for any
reason, other than as set forth in Sections 15.01, 15.02
and 15.03, we will suffer substantial damages because
of the termination, including lost Royalty Fees, lost

1 market penetration and lost goodwill in the market area
2 of the Site, lost opportunity costs, and the expense of
3 developing another La Quinta Lodging Facility in the
4 market area, which damages are extremely difficult to
5 calculate.

6 Accordingly, if this Agreement is terminated for any
7 reason, except as set forth in Section 15.01, 15.02 or
8 15.03, then, in addition to our other remedies, you agree to
9 pay us, within thirty (30) days after termination, as
10 liquidated damages and not as a penalty, an amount equal
11 to three (3) times the average annual total Royalty Fees
12 payable during the thirty six (36)-month period
13 immediately preceding termination. If your Facility has
14 been open less than thirty six (36) months on the date of
15 termination, you agree to pay us an amount as liquidated
16 damages and not as a penalty, equal to three (3) times the
17 total Royalty Fees payable to us in the previous twelve
18 (12) months. You agree and acknowledge that such
19 amounts are reasonable. Notwithstanding the foregoing,
20 (a) if the Agreement is so terminated within the first
21 twelve (12) months of operation of your Facility, you
22 agree to pay us as liquidated damages and not as a
23 penalty, the amount of \$100,000, (b) if this Agreement is
24 so terminated before your Facility opens for business as a
25 La Quinta Lodging Facility, you agree to pay us as
26 liquidated damages and not as a penalty, the amount of
27 \$100,000, unless you can demonstrate to our reasonable
28 satisfaction that your failure to open is due solely to
circumstances constituting Force Majeure, and (c) if this
Agreement is so terminated within the last three (3) years
of the Term, you agree to pay us an amount as liquidated
damages and not as a penalty, equal to the average
monthly Royalty Fees payable over the thirty six (36)-
month period prior to termination, multiplied by the
number of months remaining in the Term.

The liquidated damages described in this Section 18.03
shall not constitute an election of remedies. It shall serve
only as compensation for our lost Royalty Fees, lost
market penetration and lost goodwill in the market area of
the Site, lost opportunity costs and the expense of

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1 developing another La Quinta Lodging Facility in the
2 market area, and shall not constitute compensation for any
3 other purpose.

4 **Exhibit E Additional Franchise Agreement Terms**

5 2. Liquidated Damages. Notwithstanding Section 18.03 of
6 this Agreement, we agree that if this Agreement is
7 terminated prior to the date you commence construction of
8 your Facility or before your Facility opens as a La Quinta
9 Lodging Facility, you shall not be liable for liquidated
10 damages pursuant to Section 18.03 if you determine that
11 operating a lodging facility on the Site is not feasible and
12 thereafter do not construct or open any lodging facility on
13 the Site. However, in that event, we shall be entitled to
14 retain the Affiliation Fee and all other fees paid by you
15 prior to such termination.

16 16. Section 20.07 of the License Agreement provides for Costs and
17 Attorneys' Fees, in relevant part, as follows:

18 The party who prevails in any judicial proceeding will be
19 awarded its costs and expenses incurred in connection
20 therewith, including reasonable attorneys' fees.

21 **Cordelia's Breaches of the License Agreement**

22 17. Despite the terms of the License Agreement, Cordelia failed to
23 commence construction by May 6, 2004. As an accommodation, La Quinta agreed,
24 without waiver, to extend the deadline to November 6, 2004. Again, Cordelia failed
25 to meet that deadline either.

26 18. In response, and at Cordelia's request, La Quinta agreed, again without
27 waiver, to extend Cordelia's deadline, this time to May 5, 2005. La Quinta sent a
28 letter which states as follows:

As you are aware, pursuant to Section 5.03(b) of your
Franchise Agreement construction was to have
commenced on your Facility no later than May 6, 2004.
Such deadline was then extended to November 6, 2004.

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1 You have now requested an additional one hundred eighty
2 (180) day extension to commence construction of your
3 hotel project. We are willing to allow you such an
4 extension from November 6, 2004, the date upon which
5 your initial extension period to commence construction
6 expired (that is, until May 5, 2005).

7 Please be advised that our willingness to grant you
8 additional time to commence construction of your hotel is
9 not to be deemed a waiver of our right to insist upon strict
10 performance of your obligations under your Franchise
11 Agreement in the future, including without limitation your
12 obligation to commence construction of your hotel facility
13 upon the extended deadline as set forth above.

14 We look forward to you commencing construction of your
15 hotel. If you have any questions, please feel free to
16 contact us.

17 19. When Cordelia failed to meet the May 5, 2005 commencement
18 deadline, La Quinta, once again, extended the deadline one hundred and eighty days
19 (until November 6, 2005).

20 20. Cordelia again failed to meet the this latest extension to commence
21 construction. Accordingly, on or about June 5, 2006, La Quinta sent to Cordelia a
22 Notice of Default which states as follows:

23 Your Franchise Agreement required you to commence
24 construction of your hotel on or before May 6, 2004.
25 With the hope that you would later be able to commence
26 construction of your hotel project, we extended your
27 deadline to start construction to November 6, 2004 and
28 thereafter again extended it to May 5, 2005. When you
once again failed to meet the commencement deadline we
extended the deadline to November 6, 2005. It is now
June 2006 and you have still not commenced construction
of your hotel. As a result of your failure to commence
construction of your La Quinta hotel, I must advise you
that you are in default under your Franchise Agreement.
If you desire to cure this default, then you must correct
this failure within 30 days after receipt of this notice. If

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1 you fail to do so, then La Quinta intends to terminate your
2 Franchise Agreement. Please be advised that if your
3 Franchise Agreement is terminated as a result of your
4 default, you will additionally be liable to La Quinta for
5 liquidated damages.

6 Please immediately take action to correct this default. If
7 you would like to discuss the proper procedure to cure this
8 default, you are welcome to contact La Quinta's Franchise
9 Development Department by calling Rajiv Trivedi at 214-
10 492-6753. We would appreciate your prompt resolution
11 of this matter so that we may avoid legal action and the
12 resulting attorneys' fees and expenses, for which you will
13 also be responsible.

14
15 21. On June 24, 2006 La Quinta sent Cordelia another letter (the "Cure
16 Extension Under Notice of Default") which states as follows:

17 On June 5, 2006 I sent to you a Notice of Default, which
18 required you to commence construction of your La Quinta
19 hotel on or before July 5, 2006. The purpose of this
20 correspondence is to modify the terms upon which you
21 may cure the construction commencement default. This
22 letter should not be construed as a rescission of the Notice
23 of Default or a waiver of La Quinta's rights to pursue all
24 remedies available to it under the Franchise Agreement
25 should the default not be cured as provided herein.

26 In order to avoid La Quinta exercising the remedies
27 available to it under the Franchise Agreement upon
28 uncured default, on or before August 25, 2006, you must
provide Mr. Jeff Palla with a copy of your lender's project
study upon which they based denial of financing.

In the event that you fail to provide us with a copy of your
lender's project study on or before August 25, 2006, La
Quinta may immediately pursue all remedies available to
it as provided in the Franchise Agreement and as outlined
in the Notice of Default.

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1 22. Despite the foregoing opportunity, Cordelia never provided the
2 requested documentation, never commenced construction, and never indicated the
3 existence of a Force Majeure.

4 **Notice and Termination of the License Agreement:**

5 23. On September 7, 2006 La Quinta sent Cordelia a written notice of
6 termination ("Termination Notification") which states as follows:

7
8 You have been previously notified that you are in default
9 under your Franchise Agreement due to your failure to
10 commence construction of your property on or before
11 May 6, 2004. With the hope that you would later be able
12 to commence construction of your hotel project, we
13 extended your deadline to start construction to November
14 6, 2004 and thereafter again extended it to May 5, 2005.
15 When you again failed to meet the commencement
16 deadline we extended the deadline to November 6, 2005.
17 In June of 2006 we sent you another notification of default
18 for failure to commence construction of your property. In
19 response to your pleas for more time, we yet again
20 extended your construction commencement deadline to
21 July 5, 2006 by way of a Cure Extension Under Notice of
22 Default. When you failed to meet the July 5, 2006
23 deadline we once again extended your time period to cure
24 the default and commence construction to August 25,
25 2006. Despite our continued patience, you have once
26 more failed to commence construction of your property.

27 Accordingly, without constituting an election of remedies
28 and without waiving the right to pursue any other remedy
to which La Quinta may be entitled under your Franchise
Agreement or at law or in equity, La Quinta hereby
exercises its right to terminate your Franchise Agreement
immediately.

Pursuant to your Franchise Agreement we are entitled to
liquidated damages in the amount of \$100,000 as a result
of the early termination of your Franchise Agreement.
DEMAND IS HEREBY MADE FOR THE IMMEDIATE
PAYMENT OF THIS AMOUNT. If you fail to

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1 immediately pay this amount, La Quinta intends to
2 commence legal action against you to collect all amounts
3 due to La Quinta. Please be advised that you will be
4 responsible for all attorneys' fees and expenses incurred
5 by La Quinta in pursuing collection of this amount.

6 Nothing contained herein shall be determined to modify,
7 waive or otherwise affect any of the provisions of the
8 Franchise Agreement. No action or inaction by La Quinta
9 shall constitute a waiver of any other right or remedy
10 available to it. La Quinta hereby reserves all of its rights
11 and remedies under the Franchise Agreement, at law and
12 in equity, including without limitation those arising as a
13 result of your defaults under, and the termination of, the
14 Franchise Agreement and/or arising as a result of any
15 other or further failures by you to abide by the terms of
16 the Franchise Agreement.

17 24. To date, Cordelia remains in material breach of the License Agreement
18 as more fully set forth below.

19 **Dolat Patel's Breaches of the Guarantee Rider**

20 25. On or about November 6, 2006, defendant Dolat Patel (the
21 "Guarantor") executed a Guaranty (the "Guarantee Rider") in connection with the
22 License Agreement, which states in relevant part as follows:
23

24 Each Guarantor, independently of the obligations of
25 Franchisee, does hereby, jointly and severally, guaranty to
26 franchisor the prompt payment and performance, when
27 due, of each and every obligation of Franchisee under that
28 certain Franchise Agreement dated on or about the same
date as this Guaranty, consisting of such Franchise
Agreement, the Basic Terms and Supplemental Terms
thereof, and each exhibit, rider and addendum thereto,
including any renewal, replacement or modification of any
of the foregoing (the "Agreement"). Each Guarantor
represents and warrants that each Principal Owner is the
sole and exclusive beneficial owner of his Ownership
Interest in Franchisee, free and clear of all liens,
restrictions, agreements and encumbrances of any kind or

1 nature, other than those required or permitted by the
2 Agreement.

3 26. To date, the Guarantor has failed and refused, and continues to fail and
4 refuse to pay and continues to owe La Quinta said monies due under the Guarantee
5 Rider.

6 27. In addition, as signatory to the Guarantee Rider, the Guarantor
7 breached his obligation to guarantee this same performance by Cordelia under the
8 License Agreement.

9 28. The Guarantor breached the Guarantee Rider by failing and refusing to
10 pay La Quinta monies which were and continue to be due and owing under the
11 License Agreement and by otherwise failing to guarantee Cordelia's performance of
12 the License Agreement, including but not limited to Section 5.03 thereof.

13 **FIRST CLAIM FOR RELIEF**

14 **(Breach of Contract)**

15 29. La Quinta incorporates by reference each and every allegation stated in
16 Paragraphs 1 through 28 of this Complaint as if fully set forth herein.

17 30. La Quinta has performed all conditions, covenants and promises
18 required on its part to be performed in accordance with the terms and conditions of
19 the License Agreement. Furthermore, La Quinta is ready, willing and able to
20 perform all conditions which may be required on its part to be performed in
21 accordance with the terms of the License Agreement and has offered, and continues
22 to offer, to perform them, or is otherwise excused from same.

23 31. Cordelia breached the License Agreement by, among other things,
24 failing and refusing to comply with the requirements of Article V.

25 32. Because of Cordelia's breach of the License Agreement, La Quinta
26 was entitled to terminate and did terminate the License Agreement.

1 41. As a proximate and direct result of these material breaches, La Quinta
2 has been damaged in an amount according to proof but no less than the amounts set
3 forth herein.

4
5 WHEREFORE, La Quinta demands judgment, against all defendants, as
6 follows:

7 1. For an order requiring the specific performance of the License
8 Agreement and Guarantee Rider by defendants, respectively, to wit: an order
9 enjoining defendants to ensure compliance and to comply with all post-termination
10 covenants of the License Agreement including but not limited to those set forth in
11 Section 15 thereof;

12 2. For liquidated damages in an amount of no less than \$100,000 and
13 interest, or, in the alternative, for actual damages according to proof, together with
14 interest;

15 3. For reasonable attorneys fees according to proof;

16 4. For costs of suit;

17 5. For a declaration that the License Agreement referenced herein and
18 attached hereto as Exhibit "1" is terminated except for the survival and termination
19 provisions, as defined therein; and

20 6. For such other relief as the Court deems proper.

21
22
23 Dated: May 14, 2007

Joel Siegel
BRYAN CAVE LLP

By: _____

Attorneys for Plaintiff